Jurisdiction, Venue, and Petition Requirements

CHAPTER 4

In this chapter . . .

This chapter discusses jurisdiction and venue in adoption proceedings. This chapter does not discuss the complete jurisdiction of the Family Division of the Circuit Court, or the jurisdiction for appeals of orders relating to adoption. Chapter 7 contains an extensive discussion of post-adoption appeals.

A discussion of the requirements for an adoption petition, including notice and service, and the responsibilities of a lawyer-guardian ad litem are also included in this chapter.

4.1 Jurisdiction in Adoption Proceedings

The Family Division of the Circuit Court has exclusive jurisdiction over adoption cases. MCL 600.1021(1)(b).

4.2 Venue

Venue is proper in adoption proceedings in either the county where the petitioner resides or the county where the child is found. MCL 710.24(1). If a temporary placement of the child has already occurred, venue is proper in the

county where the prospective adoptive parent resides. MCL 710.24(1) and MCL 710.23d(2).

Venue is proper in a child protective proceeding in the county where the child is found. MCL 712A.2(b). A child is "found within the county" where the child is physically present.

*See Section 4.3 for information on concurrent jurisdiction.

When adoption proceedings and child protective proceedings have been filed in different counties, venue for the adoption is proper in either the county where the petitioner resides or the county where the child is found. MCL 710.24(1). When the venue for the adoption proceedings is located in a different county than the venue for child protective proceedings, the courts in both counties must comply with the concurrent jurisdiction notification procedures.*

Change of Venue. MCR 3.800 provides that adoption proceedings are governed by the rules generally applicable to civil proceedings. MCR 2.221 et seq., govern venue in civil proceedings.

A motion for a change of venue must be filed before or at the time the respondent files an answer. MCR 2.221(A). Untimeliness is not a ground for denying a motion for a change of venue after the answer was filed, if the court is satisfied that the facts on which the motion is based were not and could not with reasonable diligence have been known to the moving party more than 14 days before the motion was filed. MCR 2.221(B).

An objection to venue is waived if it is not raised within the above time limits. MCR 2.221(C).

When venue is proper, the court may only change venue on motion of a party; the court may not change the venue on its own initiative. MCR 2.222(B).

Grounds. The court may grant a motion for a change of venue for the convenience of the parties and witnesses or when an impartial hearing cannot be had where the action is pending. MCR 2.222(A).

The court may also change venue on a motion of a party or upon its own initiative when venue is improper. Venue may be transferred only to the county where venue is proper. MCR 2.223(A)–(B).

4.3 Concurrent Jurisdiction and Notification Procedures

Cases may arise where two courts have concurrent jurisdiction over a child. In adoption proceedings, this may arise where a child is subject to the jurisdiction of a court because of child protection proceedings and then an adoption petition is filed in another court.

MCR 3.205(A) provides:

> "Jurisdiction. If an order or judgment has provided for continuing jurisdiction of a minor and proceedings are commenced in another Michigan court having separate jurisdictional grounds for an action affecting that minor, a waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court."

Notice must be provided to other courts with concurrent jurisdiction. MCR 3.205(B)(2)–(4) provide:

> "(2) If a minor is known to be subject to the prior continuing jurisdiction of a Michigan court, the plaintiff or other initiating party must mail written notice of proceedings in the subsequent court to the attention of
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> (a) the clerk or register of the prior court, and
>
> (b) the appropriate official* of the prior court.
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> "(3) The notice must be mailed at least 21 days before the date set for hearing. If the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known.
>
> "(4) The notice requirement of this subrule is not jurisdictional and does not preclude the subsequent court from entering interim orders before the expiration of the 21-day period, if required by the best interests of the minor."

*"Appropriate official" means the friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved. MCR 3.205(B)(1).

Prior Orders. If a court with concurrent jurisdiction has entered a prior order, the provisions of that order remain in effect until altered by a subsequent order. MCR 3.205(C)(1)–(2) provide:

> "(1) Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order.
>
> "(2) A subsequent court must give due consideration to prior continuing orders of other courts, and may not enter orders contrary to or inconsistent with such orders, except as provided by law."

Duties of the Courts. The initial court that took jurisdiction and any court that subsequently takes jurisdiction over a minor must provide information to the other court. MCR 3.205(D)(1)–(4) provide:

> "(1) Upon receipt of the notice required by subrule (B), the appropriate official of the prior court

> (a) must provide the subsequent court with copies of all relevant orders then in effect and copies of relevant records and reports, and
>
> (b) may appear in person at proceedings in the subsequent court, as the welfare of the minor and the interests of justice require.
>
> "(2) Upon request of the prior court, the appropriate official of the subsequent court
>
> (a) must notify the appropriate official of the prior court of all proceedings in the subsequent court, and
>
> (b) must send copies of all orders entered in the subsequent court to the attention of the clerk or register and the appropriate official of the prior court.
>
> "(3) If a circuit court awards custody of a minor pursuant to MCL 722.26b,* the clerk of the circuit court must send a copy of the judgment or order of disposition to the probate court that has prior or continuing jurisdiction of the minor as a result of the guardianship proceedings, regardless whether there is a request.
>
> "(4) Upon receipt of an order from the subsequent court, the appropriate official of the prior court must take the steps necessary to implement the order in the prior court."

*MCL 722.26b provides for the standing of a guardian to bring an action for custody of a child.

An "appropriate official" is defined as the friend of the court, juvenile officer, or prosecuting attorney, depending on the nature of the prior or subsequent court action and the court involved. MCR 3.205(B)(1).

Confidentiality of Information. MCL 712A.3a provides:

> "When any order affecting the welfare of a child is entered under this chapter by the judge of [the Family Division of the Circuit Court] in any case where the child is subject to the prior or continuing order of any other court of this state, a notice thereof shall be filed in such other court and a copy of such notice shall be served personally or by registered mail upon the parents, guardian, or persons in loco parentis and upon the prosecuting attorney of the county wherein such other court is located. Such notices shall not disclose any allegations or findings of facts set forth in such petitions or orders, nor the actual person or institution to whom custody is changed. Such facts may be disclosed directly to such prosecuting attorney and shall be disclosed on request of the prosecuting attorney or by order of such other court, but shall be considered as confidential information, the disclosure of which will be subject to the same care as in all juvenile matters."

In *In re DaBaja*, 191 Mich App 281, 288-89 (1991), respondent and petitioner were married and, in 1982, had a son, Ronny. In 1985, the Wayne County Circuit Court entered a judgment of divorce and provided the petitioner with custody of the child. Subsequently, the petitioner moved to Wexford County and married Franklin Bass. In 1990, the petitioner and Bass filed an adoption petition and a petition to terminate the respondent's parental rights in the Wexford Probate Court. The Wexford court notified the Wayne County Friend of the Court regarding the adoption proceedings and requested information regarding support arrearage and any other pertinent information. Two weeks after Wayne County sent the requested information, the Wexford court held a hearing and terminated the respondent's parental rights pursuant to MCL 710.51(6).* Respondent argued that because the Wayne County circuit court had jurisdiction over the minor child as a result of the divorce proceeding, the Wexford probate court could not take jurisdiction over the child without proper notice to the Wayne circuit court.

*MCL 710.51(6) governs termination of parental rights pursuant to a step-parent adoption. See Section 2.13 for information on MCL 710.51(6). See also Section 8.3 for more information on step-parent adoption.

The Court of Appeals rejected this argument and found that although the Wayne circuit court retained jurisdiction, the Wexford probate court* had concurrent jurisdiction pursuant to the Adoption Code, MCL 710.24, and the Juvenile Code, MCL 712A.2(b). The Court indicated that probate jurisdiction is conferred by statute, and in cases of concurrent jurisdiction, the probate court is not required to obtain a waiver of jurisdiction by the circuit court. 191 Mich App at 288-89. The Court stated:

*Prior to January 1, 1998, the probate court had jurisdiction over adoption proceedings.

> "The children intended to be protected by the Juvenile Code are best served by a procedure that provides for notice and opportunity to the prior court for the exercise of its responsibility within its jurisdiction to further the child's best interests, but also gives unrestricted freedom to the juvenile court to do the same." 191 Mich App at 290.

The Court of Appeals upheld the Wexford court's order and indicated that the Wexford court "clearly had authority to terminate respondent's parental rights" even if the termination was inconsistent with the prior order of the Wayne circuit court. The Court also indicated that failure to give notice of the proceeding as required by MCR 3.205 does not divest the court of its jurisdiction. 191 Mich App at 290-91.

4.4 Interstate Compact on the Placement of Children (ICPC)

The Interstate Compact on the Placement of Children (ICPC) became effective in Michigan on March 25, 1984. MCL 3.711. The ICPC has been enacted in all 50 states, the District of Columbia, and the Virgin Islands.

In regards to adoption, the ICPC provides the legal framework for the placement of children that are either coming to Michigan from another state or are being sent from Michigan to another state. The ICPC ensures that

children who are placed across state lines are protected. In Michigan, the FIA is responsible for coordinating interstate adoptions. See the FIA Services Manual, CFF 932–1.

Pursuant to MCL 3.711, Article VIII (a)–(b), the ICPC does not apply to the following:

> "(a) The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or nonagency guardian in the receiving state.
>
> "(b) Any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law."

Definitions. The ICPC, Article II, provides the following definitions:

> "'Child' means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control."
>
> "'Sending agency' means a party state, or officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state."
>
> "'Receiving state' means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons."
>
> "'Placement' means the arrangement for the care of a child in a family free or boarding home or in a child caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character, and any hospital or other medical facility." MCL 3.711.

Conditions For Placement. The ICPC, Article III, Section 1 provides:

> "No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in

this article and with the applicable laws of the receiving state governing the placement of children therein." MCL 3.711.

The ICPC, Article III, sections (2)–(4), provide that the following conditions must be met prior to placement:

"(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) The name, date, and place of birth of the child.

(b) The identity and address or addresses of the parents or legal guardian.

(c) The name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child.

(d) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

"(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to subsection (2) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

"(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child."

The ICPC, Article V, section (1), provides:

"(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall

> also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein."

Placements made in Michigan pursuant to the ICPC for the purposes of adoption must be made in compliance with MCL 710.51(4). MCL 3.715 provides:

> "A placement made into this state pursuant to the interstate compact on the placement of children for the purpose of adoption shall be in compliance with [MCL 710.51(4)]. Accordingly, the making of such a placement by a sending agency of or in another state party to the compact shall constitute a discharge of the child within the meaning of subsection (1) of Article V of the compact and a concurrence therein by any and all concerned persons or agencies in this state. The appropriate authorities in this state shall not furnish a sending agency in another state with a notice pursuant to subsection (4) of Article III of the compact to the effect that the placement does not appear to be contrary to the interests of the child until it is ascertained that [MCL 710.51(4)] will be promptly satisfied."

MCL 710.51(4) provides:

*See Section 6.1 for information on formal placements.

> "Without making the child a ward of the court, the court may approve placement* of a child if the child is placed for adoption in this state by a public or licensed private agency of another state or country and if the law of the sending state or country prohibits the giving of consent to adoption at the time of placement. Before placement of the child in that instance, the sending agency shall tender evidence as the court requires to demonstrate that the agency possesses the necessary authority to consent to the adoption at the time of entry of the final order of adoption. After the sending agency has given evidence of its ability to consent, the agency shall not do anything to jeopardize its ability to grant the required consent before entry of the final order of adoption. After the sending agency gives its consent for the adoption, that consent shall not be withdrawn."

> **Note:** Pursuant to the Adoption and Safe Families Act (ASFA), the state must provide assurances that adoptions across county and state lines are pursued in order to be eligible to receive federal adoption assistance funding. 42 USC 622(b)(12).

4.5 International Adoptions

A U.S. citizen may adopt a foreign child. The adoption may take place in the child's country of origin or in the United States. In either situation, prior to reaching the courts in the state of Michigan, the prospective adoptive parent must comply with federal law in bringing the child into the United States. Complying with the federal law includes obtaining authorization from the United States Immigration and Naturalization Services (INS) and the United States Department of State for adoption of the child.

On October 6, 2000, the United States Congress adopted the "Intercountry Adoption Act of 2000," 42 USC 14901 et seq. The purposes of the Intercountry Adoption Act of 2000, provided by 42 USC 14901(b), are the following:

- to provide for the implementation by the United States of the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993 (Convention);
- to protect the rights of, and prevent abuses against, children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention and to ensure that such adoptions are in the children's best interests; and
- to improve the ability of the Federal Government to assist United States citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States.

The U.S. Department of State serves as the central authority for the United States on intercountry adoptions, with the Secretary of State acting as the head of the central authority. 42 USC 14911(a).

When a U.S. citizen brings a child into the U.S., he or she will have a certificate from the U.S. Secretary of State that indicates that the child is either eligible for adoption or has been adopted.

The legal effect of certificates issued by the Secretary of State are governed by 42 USC 14931(a)(1)–(2), which provide:

> "(1) Issuance of certificates by the Secretary of State. The Secretary of State shall, with respect to each Convention adoption,* issue a certificate to the adoptive citizen parent domiciled in the United States that the adoption has been granted or, in the case of a prospective adoptive citizen parent, that legal custody of the child has been granted to the citizen parent for purposes of emigration and adoption, pursuant to the Convention and this Act, if the Secretary of State --

*See below for the definition of "Convention adoption."

> (A) receives appropriate notification from the central authority of such child's country of origin; and
>
> (B) has verified that the requirements of the Convention and this Act have been met with respect to the adoption.
>
> "(2) Legal effect of certificates. If appended to an original adoption decree, the certificate described in paragraph (1) shall be treated by Federal and State agencies, courts, and other public and private persons and entities as conclusive evidence of the facts certified therein and shall constitute the certification required by section 204(d)(2) of the Immigration and Nationality Act [8 USC 1154(d)], as amended by this Act."

The term "Convention adoption" means an adoption of a child resident of a foreign country party to the Convention by a United States citizen, or an adoption of a child resident in the United States by an individual residing in another Convention country. 42 USC 14902(10).

> **Note:** The United States signed the Hague Convention on Intercountry Adoption on March 31, 1994, indicating the country's intent to proceed with efforts to ratify the Convention. The Intercountry Adoption Act of 2000 was the first step in preparing to authorize and implement the Convention. According to the U.S. Department of State, it is hoped that the U.S. will ratify the Convention and bring it into force in 2004. See http://travel.state.gov.

42 USC 14953(a) provides that the Convention and the Intercountry Adoption Act of 2000:

> "shall not be construed to preempt any provision of the law of any State or political subdivision thereof, or prevent a State or political subdivision thereof from enacting any provision of law with respect to the subject matter of the Convention or this Act, except to the extent that such provision of State law is inconsistent with the Convention or this Act, and then only to the extent of the inconsistency."

The Convention and the Intercountry Adoption Act of 2000 does not affect the application of the Indian Child Welfare Act.* 42 USC 14953(b).

*See Chapter 11 for more information on the Indian Child Welfare Act.

A. Enforcement of Adoption Orders Issued in Another Country

When a foreign child is brought into the United States after an adoption in a foreign country,* the U.S. Secretary of State must issue a certificate, prior to the child's admittance into this country, indicating that the child has been adopted. 42 USC 14931. Prior to issuing the certificate, the U.S. Secretary of State must receive appropriate notification from the child's country of origin and must verify that the federal adoption requirements are met. 42 USC 14931.

*This section only applies to foreign countries that are members of the Hague Convention.

42 USC 14931(b) provides:

> "Legal effect of Convention adoption finalized in another Convention country. A final adoption in another Convention country, certified by the Secretary of State pursuant to subsection (a) of this section or section 303(c) [42 USC 14932(c)], shall be recognized as a final valid adoption for purposes of all Federal, State, and local laws of the United States."

The court must recognize an adoption order issued by a court in another country. MCL 710.21b provides:

> "A court order or decree establishing the relationship of parent and child by adoption and issued by a court in another country is presumed to be issued in accordance with the laws of that country and shall be recognized in this state. The rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the order or decree were issued by a court of this state."

B. U.S. Citizen Adopting Foreign Child

When a foreign child is brought into the United States for adoption, the U.S. Secretary of State must issue a certificate, prior to the child's admittance into this country, indicating that the child is eligible for adoption. 42 USC 14931. Prior to issuing the certificate, the U.S. Secretary of State must receive appropriate notification from the child's country of origin and must verify that the federal adoption requirements are met. 42 USC 14931.

42 USC 14931(c) provides:

> "Condition on finalization of Convention adoption by State court. In the case of a child who has entered the United States from another Convention country for the purpose of adoption, an order declaring the adoption final shall not be entered unless the Secretary of State has issued the certificate provided for in subsection (a) with respect to the adoption."

4.6 Petition Requirements

In order to adopt a child, the adoptive parent or parents must file a petition for adoption. MCL 710.24(1) governs the filing of petitions and provides:

*See Section 5.2 for more information on MCL 710.23d.

> "If a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a change of name, with the intent to make the adoptee his or her heir, that person, together with his wife or her husband, if married, shall file a petition with the court of the county in which the petitioner resides or where the adoptee is found. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in [MCL 710.23d(2)*]."

Pursuant to MCL 710.24(2), the petition for adoption must be verified by each petitioner and must include all of the following:

> "(a) The name, date and place of birth, and place of residence of each petitioner, including the maiden name of the adopting mother.

*Subsection (5) governs direct placement adoptions where the parties have agreed not to exchange identifying information. See Section 8.1 for information on MCL 710.24(5).

> "(b) Except as otherwise provided in subsection (5),* the name, date and place of birth, and place of residence if known of the adoptee.
>
> "(c) The relationship, if any, of the adoptee to the petitioner.
>
> "(d) The full name by which the adoptee shall be known after adoption.
>
> "(e) The full description of the property, if any, of the adoptee.
>
> "(f) Unless the rights of the parents have been terminated by a court of competent jurisdiction or except as otherwise provided in subsection (5), the names of the parents of the adoptee and the place of residence of each living parent if known.
>
> "(g) Except as otherwise provided in subsection (5), the name and place of residence of the guardian of the person or estate of the adoptee, if any has been appointed."

Attached in Appendix B is the SCAO form "Petition for Adoption."

Please note that additional information is required for a direct placement adoption, and a separate SCAO form "Petition for Direct Placement Adoption" is also provided in Appendix B. MCL 710.24(3) requires the petitioner in a direct placement adoption to attach to the petition a verified statement certifying that the petitioner has been informed of the availability of counseling services and whether the petitioner has received counseling. In a

direct placement adoption, the petitioner must also attach a copy of a preplacement assessments required by MCL 710.24(4). See Section 8.1 for more information on direct placement adoptions and the required assessments.

A. Persons Who May Adopt a Child

MCL 710.24(1), in relevant part provides:

> "If a person desires to adopt a child or an adult . . . that person, together with his wife or her husband, if married, shall file a petition with the court . . . ."

The Adoption Code permits a single person to adopt. *In re Munson*, 210 Mich App 500, 504 (1995).

In *In re Adams*, 189 Mich App 540, 543 (1991), the Court of Appeals held that two married individuals who are not married to each other are precluded from jointly adopting a child. In *Adams*, James Jennings and Sharan Selleck filed a petition for an adult adoption of Molly Adams, their natural child. Jennings and Selleck were married to each other at the time Molly was born. Later, they divorced and Selleck married Phillip Adams. Selleck and Adams then petitioned the court to allow Adams to adopt Molly. The court granted that petition for adoption. Selleck and Adams eventually divorced and Selleck married William Logan. During that time, Jennings married Rose Ann Makowski. Jennings and Selleck filed a petition to adopt Molly in order to again establish both Jennings and Selleck as her legal parents. The spouses of both Jennings and Selleck joined in the petition for adoption. 189 Mich App at 541. The lower court denied the adoption petition and indicated that it had no authority to allow two married persons who are not married to each other to adopt the same person. The court indicated that MCL 710.24 specifically provides that "a person" or "that person, together with his wife or her husband, if married" may adopt a child or an adult. The court concluded therefore that Jennings and Selleck could not join together to adopt Molly. The Court of Appeals upheld the lower court's decision and indicated that the question of who may adopt is controlled by statute. 189 Mich App at 543. The Court held:

> "We believe that the policy of providing a stable family relationship for an adoptee, which motivated the Legislature's choice to limit the group of persons eligible to adopt to single persons and married persons jointly with their spouses, remains valid even today. Any enlargement of that group must come from the Legislature and not this Court." 189 Mich App at 547.

Judge Doctoroff urged the Legislature in his concurring opinion to amend the statute to provide the court with the discretion to grant petitions where all interested parties consent. 189 Mich App at 548.

B. Persons Who May Not Adopt a Child

The court may not enter an order of adoption if the court has reliable information that the prospective adoptive parent has been convicted of any of the following:

- MCL 750.145a — Accosting, enticing or soliciting a child for immoral purposes. MCL 710.22a(a).
- MCL 750.145c(2) — Creating child sexually abusive material through knowingly persuading, inducing, enticing, coercing, causing, or allowing a child to engage in child sexually abusive activity, or the producing, making or financing of any child sexually abusive activity or material. MCL 710.22a(a).
- MCL 750.145c(3) — Distributing, promoting, or financing the distribution or promotion of any child sexually abusive material. MCL 710.22a(a).
- MCL 750.145c(4) — Possession of child sexually abusive material. MCL 710.22a(a).
- MCL 750.520b — First-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520c — Second-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520d — Third-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520e — Fourth-degree criminal sexual conduct, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520f — A second or subsequent criminal sexual conduct offense or any similar statute of the United States or other states including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- MCL 750.520g — Assault with intent to commit conduct involving penetration, if the victim was under the age of 18 at the time the crime was committed. MCL 710.22a(b).
- The law of another state substantially similar to one of the above enumerated crimes. MCL 710.22a(c).

C. Second-Parent Adoption (Unmarried Partners)

The typical adoption in Michigan involves a husband and wife adopting a child. However, the statute is clear that a single, unmarried person may adopt a child or an adult.

MCL 710.24(1), in relevant part, provides:

> "If *a person* desires to adopt a child or an adult . . . that *person, together with his wife or her husband, if married*, shall file a petition with the court . . . ."(Emphasis added.)

The Court of Appeals in *In re Munson*, 210 Mich App 500, 504 (1995), held that "the Adoption Code permits single persons to adopt . . . ."

An issue has arisen in a number of Michigan trial courts regarding whether two unrelated persons (usually, but not always, lesbian or gay partners) may adopt a child or adult. The only two alternatives contained in MCL 710.24(1) are that "a person" or a "person, together with his wife or her husband, if married" may file a petition for adoption with the court. That language clearly states that the possible petitioners are limited to a single person or a husband and wife. To the best of the Advisory Committee's knowledge, all courts in Michigan, save one, have so interpreted the plain language of the statute. One court, for a period of time, did permit unrelated adults to adopt. The apparent rationale for interpreting the statutory phrase "a person" as also including "more than one unmarried person," and thus permitting two unrelated adults to adopt, is MCL 8.3.

MCL 8.3 provides that when construing a Michigan statute, the rules contained in MCL 8.3a to MCL 8.3w must be observed, unless such construction would be inconsistent with the manifest intent of the legislature. MCL 8.3b provides that "[e]very word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number . . . ." Based on the above rules for statutory interpretation, it has been argued that when the legislature used the words "a person" it also meant "more than one [unmarried] person."

A majority of the Advisory Committee believes that MCL 8.3b does <u>not</u> apply to the proper interpretation of MCL 710.24(1) because "such construction would be inconsistent with the manifest intent of the legislature." MCL 8.3.

If MCL 8.3b were to apply to MCL 710.24(1) and "a person" were interpreted as including more than one unmarried person, there would be no limit to the number of individuals who could adopt a child or an adult. While MCL 8.3b has only been argued to permit two unmarried individuals to adopt, once "a" is interpreted as including the plural, there is no legal limit to the number of individuals who could adopt a child or adult. For example, three or more unmarried persons could lawfully petition to adopt a child. Any group of unmarried individuals could petition to adopt a child or an adult.

A majority of the Advisory Committee believes that these possibilities were never contemplated or intended by the legislature when it enacted MCL 710.24(1).

While there are no appellate decisions in Michigan on the issue of whether two or more unmarried persons may petition to adopt a child or an adult under MCL 710.24(1), one reported decision does address the issue, albeit in dicta. In *In re Adams,* 189 Mich App 540, 544 (1991), the court opined:

> "However, it has been held inconsistent with the general scope and purpose of adoption statutes to allow two unmarried persons to make a joint adoption. 2 CJS §§ 14-15, pp 434-435. In *Adoption of Meaux*, 417 So 2d 522 (La App, 1982), the Louisiana Court of Appeals held that under a Louisiana adoption statute which allowed a single person or a married couple to adopt a child, the natural parents of a minor child, who were apparently living together but not married to each other, could not jointly adopt their natural child because they were neither "a single person" nor a married couple."

Therefore, a majority of the Advisory Committee recommends that the statute be given its plain meaning and that only single persons or married couples (husband and wife) may adopt a child or an adult in Michigan.

D. Filing and Notice Requirements

*See Section 5.1 for more information on temporary placements.

An adoption petition must be filed in the Family Division of the Circuit Court in the county where the petitioner resides or in the county where the adoptee is found. MCL 710.24(1). If the adoptee has been placed in a temporary placement,* the petition must be filed in the county where the prospective adoptive parent resides. MCL 710.24(1) and MCL 710.23d(2).

Note: The court may *not* refuse to accept an adoption petition because it was not prepared by an attorney. Const 1963, art 1, § 13.

Except as modified by MCR 3.801–3.806, adoption proceedings are governed by the rules generally applicable to civil procedures. MCR 3.800.

MCR 3.802(A)(3) provides adoption petitions may be served by mail pursuant to MCR 2.107(C)(3).

MCR 2.107(C)(3) provides that mailing a copy means "enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail." Service is complete at the time of mailing. MCR 2.107(C)(3).

MCR 2.107(A)(1) requires every party to be served, and MCL 710.24a(1) defines the interested parties to an adoption petition.

Note: If the adoptive parent is seeking adoption subsidies, the certification for a support subsidy *must* be made prior to the filing of the adoption petition. See Section 10.5 for information on adoption subsidies.

E. Interested Parties

Pursuant to MCL 710.24a(1), the interested parties in a petition for adoption are all of the following:

"(a) The petitioner.

"(b) The adoptee, if over 14 years of age.

"(c) A minor parent, adult parent, or surviving parent of an adoptee, unless 1 or more of the following apply:

(i) The rights of the parent have been terminated by a court of competent jurisdiction.*

*See Sections 2.11–2.14 regarding termination of parental rights.

(ii) A guardian of the adoptee, with specific authority to consent to adoption,* has been appointed.

*See Section 2.6 regarding a guardian's authority to consent to adoption.

(iii) A guardian of the parent, with specific authority to consent to adoption, has been appointed.

(iv) The rights of the parent have been released.*

*See Section 2.1 regarding release of parental rights.

(v) The parent has consented to the granting of the petition.*

*See Section 2.6 regarding consent to adoption. See Sections 4.4 and 4.5 regarding interstate and intercountry adoptions.

"(d) The [FIA] or a child placing agency to which the adoptee has been, or for purposes of subsection (3) is proposed to be, released or committed by an order of the court.

"(e) A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.

"(f) The court with permanent custody of the adoptee.

*See Section 4.3 regarding concurrent jurisdiction.

*See Section 2.6 regarding consent to adoption.

"(g) A court with continuing jurisdiction* over the adoptee.

"(h) A child placing agency of another state or country that has authority to consent to adoption.*

"(i) The guardian or guardian ad litem of an interested party."

MCL 710.24a(6) provides that the court may, in the interests of justice, require additional parties to be served.

In *In re Toth,* 227 Mich App 548, 554-55 (1998), a grandparent with court-ordered visitation argued that she was an interested party to her grandchild's adoption. The Court of Appeals indicated that MCL 710.24a(1) provides a specific list of individuals and agencies that are "interested parties," and an adoptee's grandparent is not one of the enumerated parties. Further the Court found that although MCL 710.24a(6) allows the court to require service on additional parties, it was not error for the lower court to determine that a grandparent with court-ordered visitation is not an interested party. 227 Mich App at 555.

F. Required Supporting Documentation

MCL 710.26(1)(a)–(h) states that the following documentation must be provided to the court at the time the petition is filed or after the filing of the petition but prior to the hearing on the petition:

*See Chapter 2 for information on releases and termination of parental rights.

- Except in instances of parental consent to adoption, a copy of each release or order terminating parental rights* over the child having a bearing upon the authority of a person to execute the consent to adoption.
- A copy of the order of commitment, if a commitment was made to a child placing agency or to the FIA.

*See Sections 2.1 and 2.6 for more information on a guardian's authority to release or consent.

- Proof of a guardian's appointment and authorization to execute the release or consent* to the child's adoption.

- A copy of the consent to adoption as required in this chapter. If the consent is required pursuant to MCL 710.43(1)(b), (c) or (d), then consent shall be filed concurrently with the filing of the adoption petition unless a motion is filed pursuant to MCL 710.45.*

*MCL 710.45 provides for the filing of a motion to determine if consent was arbitrarily and capriciously withheld. See Section 2.9.

- A copy of the adoptee's birth certificate, verification of birth, hospital registration, or other satisfactory proof of date and place of birth, if obtainable, unless this filing is waived by written order of the judge.
- The report of the investigation prepared pursuant to MCL 710.46.*

*See Section 5.5 for more information on MCL 710.46.

- If the petition alleges nonsupport and noncommunication by a parent, as described in MCL 710.51(6), an affidavit verifying that fact.
- Any additional facts considered necessary by the court.

If the adoption is a direct placement adoption,* the petitioner must also attach to the petition a verified statement certifying that the petitioner has been informed of the availability of counseling services and whether the petitioner has received counseling. MCL 710.24(3).

*See Section 8.1 for more information on direct placement adoptions.

Note: The verified statements of the parties are required at least seven days prior to the formal placement. MCL 710.54. Many courts require the filing of the statements at the same time the petition for adoption is filed. See Section 10.3 for more information regarding verified statements.

G. Compilation of Nonidentifying and Identifying Information

The Adoption Code requires that prior to placing a child for adoption, identifying and nonidentifying information must be provided to the prospective adoptive parent. This section does not apply to step-parent or relative adoptions.*

*See Section 8.3 for information on step-parent adoptions. See Section 8.4 for information on relative adoptions.

1. Nonidentifying Information

MCL 710.27(1) provides:

> "Before placement of a child for adoption, a parent or guardian, a child placing agency, the [FIA], or the court that places the child shall compile and provide to the prospective adoptive parent a written document containing all of the following nonidentifying information that is not made confidential by state or federal law and that is reasonably obtainable from the parents, relatives, or guardian of the child; from any person who has had physical custody of the child for 30 days or more; or from any person who

has provided health, psychological, educational, or other services to the child:

> "(a) Date, time, and place of birth of the child including the hospital, city, county, and state.
>
> "(b) An account of the health and genetic history of the child, including an account of the child's prenatal care; medical condition at birth; any drug or medication taken by the child's mother during pregnancy; any subsequent medical, psychological, psychiatric or dental examination and diagnosis; any psychological evaluation done when the child was under the jurisdiction of the court; any neglect or physical, sexual, or emotional abuse suffered by the child; and a record of any immunizations and health care the child received while in foster or other care.
>
> "(c) An account of the health and genetic history of the child's biological parents and other members of the child's family, including any known hereditary condition or disease; the health of each parent at the child's birth; a summary of the findings of any medical, psychological, or psychiatric evaluation of each parent at the time of placement; and, if a parent is deceased, the cause of and the age at death.
>
> "(d) A description of the child and the child's family of origin, including all of the following:
>
> > (i) Given first name of the child at birth.
> >
> > (ii) The age and sex of siblings of the child.
> >
> > (iii) The child's enrollment and performance in school, results of educational testing, and any special educational needs.
> >
> > (iv) The child's racial, ethnic, and religious background, and a general description of the child's parents, including the age of the child's parents at the time of termination of parental rights, and the length of time the parents had been married at the time of placement.
> >
> > (v) An account of the child's past and existing relationship with any relative, foster parent, or other individual or facility with whom the child has lived or visited on a regular basis. The account shall not include names and addresses of individuals.

> (vi) The levels of educational, occupational, professional, athletic, or artistic achievement of the child's family.
>
> (vii) Hobbies, special interests, and school activities of the child's family.
>
> (viii) The circumstances of any judicial order terminating the parental rights of a parent for abuse, neglect, abandonment, or other mistreatment of the child.
>
> (ix) Length of time between the termination of parental rights and adoptive placement and whether the termination was voluntary or court-ordered.
>
> (x) Any information necessary to determine the child's eligibility for state or federal benefits, including financial, medical, or other assistance."

If the parent, guardian, child placing agency, FIA, or court considers any additional nonidentifying information to be appropriate, that information must also be included. MCL 710.27(2).

If any of the information required by MCL 710.27(1) cannot be obtained prior to a temporary placement, then the information must be submitted at the time of formal placement, if that information can be reasonably obtained.*

*See Section 5.1 for more information on temporary placements. See Section 6.1 for information on formal placements.

2. Identifying Information

A parent or guardian, the FIA, a child placing agency, or a court that places an adoptee under the Adoption Code must compile the following information if it can be reasonably obtained:

- Name of the child before adoptive placement.
- Name of each biological parent at the time of termination of parental rights.
- The most recent name and address of each biological parent.
- Names of the biological siblings at the time of termination of parental rights. MCL 710.27(3).

3. Maintaining Nonidentifying and Identifying Information

The nonidentifying and identifying information required by MCL 710.27(1) and MCL 710.27(3) must be maintained by the child placing agency, the FIA, or the court that places the child. MCL 710.27(4).

*See Section 8.1 for information on direct placement adoptions.

In cases of direct placement adoption,* the parent or guardian must transmit the information required under MCL 710.27(1) and MCL 710.27(3) to the court prior to the termination of parental rights. MCL 710.27(4).

The FIA must establish and maintain a central adoption registry to control the release of identifying information described in MCL 710.27(3). For more information on the central adoption registry and obtaining nonidentifying information, see Chapter 9.

4. Destruction of Nonidentifying and Identifying Information

An employee or agent of a child placing agency, the court, or the FIA who intentionally destroys information required to be maintained by MCL 710.27 is guilty of a misdemeanor. MCL 710.27(4).

5. Exchange of Information

MCL 710.27(7) provides:

> "This section does not prevent a parent or guardian and prospective adoptive parent from exchanging identifying information or meeting pursuant to [MCL 710.23a] and [MCL 710.23b]."*

*MCL 710.23a and 710.23b provide for the direct placement of a child for adoption. See Section 8.1 regarding direct placement adoption.

H. Adoption Support Groups

Before or at the time of the hearing on the adoption petition, the court must provide the adoptee, if he or she is 14 years old or older, and the adoptive parents with a list of adoption support groups. MCL 710.26(3).

Attached in Appendix F is a listing of adoption support groups.

4.7 The Lawyer-Guardian Ad Litem Post-Termination in Child Protective Proceedings

During child protective proceedings the court must appoint a lawyer-guardian ad litem to represent the child, and the child may not waive the assistance of a lawyer-guardian ad litem. MCL 712A.17c(7).

A "lawyer-guardian ad litem" is an attorney appointed pursuant to MCL 712A.17d. MCL 712A.13a(1)(f). MCL 712A.17d sets forth the powers and duties of a lawyer-guardian ad litem:

> "(1) A lawyer-guardian ad litem's duty is to the child, and not the court. The lawyer-guardian ad litem's powers and duties include at least all of the following:

(a) The obligations of the attorney-client privilege.

(b) To serve as the independent representative for the child's best interests, and be entitled to full and active participation in all aspects of the litigation and access to all relevant information regarding the child.

(c) To determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information.

(d) Before each proceeding or hearing, to meet with and observe the child, assess the child's needs and wishes with regard to the representation and the issues in the case, review the agency case file and, consistent with the rules of professional responsibility, consult with the child's parents, foster care providers, guardians, and caseworkers.

(e) To explain to the child, taking into account the child's ability to understand the proceedings, the lawyer-guardian ad litem's role.

(f) To file all necessary pleadings and papers and independently call witnesses on the child's behalf.

(g) To attend all hearings and substitute representation for the child only with court approval.

(h) To make a determination regarding the child's best interests and advocate for those best interests according to the lawyer-guardian ad litem's understanding of those best interests, regardless of whether the lawyer-guardian ad litem's determination reflects the child's wishes. The child's wishes are relevant to the lawyer-guardian ad litem's determination of the child's best interests, and the lawyer-guardian ad litem shall weigh the child's wishes according to the child's competence and maturity. Consistent with the law governing attorney-client privilege, the lawyer-guardian ad litem shall inform the court as to the child's wishes and preferences.

(i) To monitor the implementation of case plans and court orders, and determine whether services the court ordered for the child or the child's family are being provided in a timely manner and are accomplishing their purpose. The lawyer-guardian ad litem shall inform the court if the services are not being provided in a timely manner, if the

> family fails to take advantage of the services, or if the services are not accomplishing their intended purpose.
>
> (j) Consistent with the rules of professional responsibility, to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter.
>
> (k) To request authorization by the court to pursue issues on the child's behalf that do not arise specifically from the court appointment."

The lawyer-guardian ad litem appointed by the court must serve until discharged by the court. If the court appointed the lawyer-guardian ad litem in a child protective proceeding, the court may not discharge the lawyer-guardian ad litem as long as the child is "subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency, unless the court discharges the lawyer-guardian ad litem for good cause shown on the record. If the child remains subject to the jurisdiction, control, or supervision of the court, or the Michigan children's institute or other agency, the court shall immediately appoint another lawyer-guardian ad litem to represent the child." MCL 712A.17c(9).

The lawyer-guardian ad litem must attend post-termination review hearings conducted pursuant to MCL 712A.19c. MCL 712A.17d(1)(g). The lawyer-guardian ad litem and MCI superintendent must consult with one another if the lawyer-guardian ad litem has an objection or concern regarding the child's placement or permanency plan. MCL 400.204(2).

> **Note:** For more information on the responsibilities, powers, and duties of a lawyer-guardian ad litem, see Miller, *Lawyer-Guardian Ad Litem Protocol* (MJI, 2003).

4.8 Avoiding Giving Legal Advice to Unrepresented Petitioners and Others

Parties in an adoption proceeding are not always represented by counsel. It is important to remember that court clerks cannot provide legal advice. However, clerks have a wealth of knowledge about the court system and can provide information.

Court clerks can provide the following:

- Legal definitions. (MCL 710.22 contains the legal definitions for many terms contained in the Adoption Code.)

- Procedural definitions. (The clerk can explain what happens at a specific hearing.)
- Citations of statutes, court rules, and ordinances. (The statutory provisions of the Michigan Adoption Code are MCL 710.21 through MCL 710.70. However, a clerk may not provide legal research.)
- Public case information. (Adoption files are not public; they are confidential* and cannot be shared with the public. However, if asked about a confidential file, a clerk may confirm its existence but cannot provide any other information.)
- General information on court operations. (A clerk may indicate generally when hearings will be scheduled and at which hearing an adoption may be finalized.)
- Options.
- Access. Most people are not familiar with the court system. They often cannot describe their problem in legal terms. Court clerks are the gatekeepers to the system. It is their job to ensure that the court system is accessible. The information that is presented, and the manner in which it is presented, can affect how accessible the system is. (If someone misstates a legal term, the clerk should correct that person, and direct them appropriately. A clerk should not deny someone access because he or she does not know the correct legal terminology.)
- General referrals. (If someone is looking for an adoption agency, an appropriate referral would be a general referral to the yellow pages.)
- Forms and instructions on how to complete the forms. (Appendix B contains many of the SCAO forms in regards to adoption. The clerk may provide the forms and instructions on how to complete the forms.)

*See Section 9.1 for information on the confidentiality of adoption files.

The clerk must *not* do the following:

- Provide legal interpretations.
- Provide procedural advice.
- Provide research of statutes, court rules, and ordinances.
- Provide confidential case information.*
- Provide confidential or restricted information on court operations.
- Provide opinions.
- Deny access, discourage access, or encourage litigation.

*See Section 9.1 regarding restrictions on access to adoption records and proceedings.

- Provide subjective or biased referrals. (The clerk may not refer a party to a specific attorney or adoption agency.)
- Fill out forms for a party. (The clerk may fill out forms for a party when there are language barriers or physical handicaps. This should only be done when no other options are available.)

For an in-depth treatment of the above information, see *Legal Advice v Access to the Courts, Do YOU Know the Difference?* (MJI, 1997), attached in Appendix G.

Note: The Michigan Judicial Institute offers the program "I'm sorry, I can't give legal advice." This program explains to court support personnel the reasons they cannot give legal advice and strategies for providing better customer service.

The program is available online in CDROM format at www.courts.michigan.gov/mji/resources/cds.htm. (Last visited on June 23, 2003.) The program is also available through MJI's web-based training program on this topic. See www.courts.michigan.gov/mji/wbt/wbtindex.htm for more information on the web-based training program. (Last visited on June 23, 2003.)